

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**JOHN W. GOFF AND GOFF GROUP,  
INC.,**

**Plaintiffs,**

**v.**

**PHOENIX-DURANGO, ET AL.,**

**Defendants.**

**CIVIL ACTION NO.  
CV - 2:06cv389-MEF**

**DEFENDANTS' RENEWED OBJECTION TO PLAINTIFF'S MOTION TO REMAND**

COMES NOW Phoenix-Durango, LLC, Jeremiah A. Henderson II, and Jeremiah A. Henderson III, defendants in the above-styled action, and for their Renewed Objection to Plaintiff's Motion to Remand, say as follows:

On May 26, 2006, Plaintiff John W. Goff, a resident of Alabama, filed a Motion to Remand, arguing lack of diversity jurisdiction because "it is reasonable to assume that at least one of the Defendants [Jeremiah A. Henderson II or Jeremiah A. Henderson III] has a domicile in Alabama." *See* Plaintiff's Brief in Support of Motion to Remand, With Motion for Leave and Extension of Time to Conduct Jurisdictional Discovery, filed May 26, 2006. Plaintiff's sole basis for this "assumption of residency" is that simply because the Hendersons own property in Alabama, they must be residents of Alabama. On June 8, 2006, Defendants filed an Objection to Plaintiff's Motion to Remand, attaching as exhibits affidavits signed by Jeremiah A. Henderson II and Jeremiah A. Henderson III which show unequivocally that Jeremiah A. Henderson II is a resident of Texas and that Jeremiah A. Henderson III is a resident of Florida and that both have the mental intent to remain in their respective states. *See* Affidavit of Jeremiah A. Henderson II and Affidavit of Jeremiah A. Henderson III, attached as Exhibits 1 and 2 to Defendants'

Objection to Plaintiff's Motion to Remand, filed June 8, 2006. One's "citizenship" or "domicile" for diversity jurisdiction purposes is determined by two factors: "(1) physical presence within a state; and (2) the mental intent to make a home there indefinitely." *McDonald v. Equitable Life Ins. Co. of Iowa*, 13 F.Supp. 2d 1279 (M.D. Ala. 1998). Clearly, both Jeremiah A. Henderson II and Jeremiah A. Henderson III, who reside within Texas and Florida, respectively, and who have the mental intent to make their homes in Texas and Florida, respectively, are residents of Texas and Florida for diversity jurisdiction purposes. This Court has diversity jurisdiction under 28 U.S.C. § 1332.

Plaintiff's sole response to Defendants' Objection to Plaintiff's Motion to Remand was the filing of an unauthenticated printout from [www.whitepages.com](http://www.whitepages.com), which contained a listing for a Jere Henderson in Troy, Alabama. *See* Plaintiff's Notice of Filing Evidentiary Materials, filed June 14, 2006. The telephone number in question services a log cabin which was built by Jeremiah A. Henderson's ancestors around 1850. *See* Affidavit of Jeremiah A. Henderson III, attached hereto as Exhibit A. The majority of the land surrounding the log cabin was sold to Lockheed over ten years ago, but the family kept the twenty acres on which the log cabin was located. *See* Exhibit A. The telephone number for the log cabin has been listed in Jeremiah A. Henderson II's name since the number was obtained in approximately 1985, but Jeremiah A. Henderson II has never resided in the cabin. *See* Exhibit A. Jeremiah A. Henderson II left Alabama and moved to Florida, and subsequently to Texas, more than ten years ago. *See* Exhibit A. He is presently a resident of Humble, Texas, where he has resided since January 2004 and where he intends to continue to reside. *See* Exhibit A; *see also* Exhibit 1 to Defendants' Objection to Plaintiff's Motion to Remand, filed June 10, 2006.

Clearly, this Court has original jurisdiction. Complete diversity of citizenship exists between Plaintiffs and all defendants: Plaintiff Goff Group, an Alabama corporation with its principal place of business in Alabama; Plaintiff John W. Goff, a citizen of Alabama; Defendant Phoenix-Durango, a limited liability company which is a citizen of Texas and Florida, the states in which its members are citizens; Defendant Jeremiah A. Henderson II, a citizen of Texas; and Defendant Jeremiah A. Henderson III, a citizen of Florida. Removal of this action was proper pursuant to 28 U.S.C. §§ 1332 and 1441.

WHEREFORE, ABOVE PREMISES CONSIDERED, Defendants request this Honorable Court enter an order denying Plaintiff's Motion to Remand and retaining jurisdiction over this matter which was properly removed to this Court under diversity jurisdiction.

s/Vernon L. Wells, II

s/C. Ellis Brazeal

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#### CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 2006, I electronically filed the foregoing DEFENDANTS' RENEWED OBJECTION TO PLAINTIFF'S MOTION TO REMAND with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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